

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

Charm Restaurant Group t/a	
New Town Kitchen and Lounge	Protest
1336 U Street, NW	Hearing
Retailer CT - ANC-1B	(Status)
License No. 93095	
Case #14-PRO-00010	

(Renewal Application)

May 1, 2014

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member

P-R-O-C-E-E-D-I-N-G-S

(10:29 a.m.)

CHAIRPERSON MILLER: Okay. Next case is another Protest (Status) Hearing case, Case No. 14-PRO-00010, New Town Kitchen and Lounge located at 1336 U Street, N.W., License No. 93095, in ANC-1B.

Okay. I don't --

MR. BAUMANN: Sign-in again?

CHAIRPERSON MILLER: Yes, for this case, yeah. So you might want to put the case in parentheses. Why don't you all identify yourselves for the record?

MR. ISASI: Good morning. My name is William Isasi. The last name is spelled I-S-A-S-I. I'm the representative of the resident protest group.

CHAIRPERSON MILLER: Okay. Group of 6?

MR. ISASI: Group of six, yeah.

CHAIRPERSON MILLER: Okay.

MR. BAUMANN: Hi, my name is Nick

1 Baumann. I'm from ANC-1B.

2 MR. FERRIS: I'm Elwyn Ferris
3 representing the Shaw-Dupont Citizens
4 Alliance.

5 MS. JOHNSON: Good morning. I'm
6 Aileen Johnson. I'm a member of the citizens
7 protesting group.

8 CHAIRPERSON MILLER: The group of
9 six?

10 MR. ISASI: Yes.

11 CHAIRPERSON MILLER: Okay. Have
12 you been in touch with the licensee with
13 respect to their coming here for this status?

14 MR. ISASI: We attended a
15 mediation with them and he was on the email
16 that Ms. Fletcher sent out notifying us of all
17 the dates and times.

18 CHAIRPERSON MILLER: Okay. Now,
19 there is no licensee here at this time and I'm
20 wondering if you all have heard anything?

21 MR. BAUMANN: I believe one of my
22 -- or one of the ANC-1B Commissioners emailed

1 him about it, but I'm not totally certain of
2 that.

3 CHAIRPERSON MILLER: Okay.

4 MR. BAUMANN: But he certainly --
5 I mean --

6 CHAIRPERSON MILLER: Right.

7 MR. BAUMANN: He certainly was
8 notified.

9 CHAIRPERSON MILLER: Well, okay.
10 So --

11 MR. ISASI: Chairperson Miller, if
12 I could ask a quick question?

13 CHAIRPERSON MILLER: Yes.

14 MR. ISASI: My understanding is
15 that if we fail to appear at a Status Hearing,
16 we are -- our protest is dismissed. So we
17 would ask that the Board would respectfully
18 consider what they can -- what are the
19 consequences if the licensee doesn't appear?

20 CHAIRPERSON MILLER: It's the same
21 thing. His application will be dismissed.
22 However, that's why I'm asking if you knew,

1 you know, whether he was on his way or
2 whatever.

3 What we often do, if not always,
4 is, in this kind of situation, we come back to
5 your case at the end of the statuses, in the
6 event that they are on their way, because it's
7 pretty severe. The traffic was very bad
8 today. So if you can hang in, it's probably
9 not going to be that much longer to go through
10 these statuses, we will come back and if they
11 are not here by then, that's what we will do.

12 MR. ISASI: Well, one quick
13 question. Would it be possible for everyone
14 else to leave and for me just to stay as the
15 representative, rather than keep people from
16 work?

17 CHAIRPERSON MILLER: Yeah.

18 MEMBER SILVERSTEIN: Absolutely.

19 CHAIRPERSON MILLER: Yes, if there
20 is nothing else, yes, that's all right.

21 MR. BAUMANN: So ANC-1B wouldn't
22 lose its --

1 CHAIRPERSON MILLER: No. You were
2 here on time.

3 MR. BAUMANN: Okay.

4 MEMBER SILVERSTEIN: Right.

5 CHAIRPERSON MILLER: And if there
6 is anything -- is there anything else we need
7 to hear from you anyway, before you go?

8 MR. BAUMANN: There have been a
9 number of ANC-1B12 Commissioners, Zahra
10 Jilani, has been negotiating with the
11 licenseholder. And the licenseholder, at the
12 suggestion of Ms. Fletcher, sort of
13 tentatively agreed to a volume setting
14 exercise to see --

15 CHAIRPERSON MILLER: Wait a
16 minute. Wait a second. I don't think we want
17 to go there. We don't want to get into what
18 your settlement negotiations are or anything,
19 especially because he is not even here.

20 MR. BAUMANN: All right.

21 CHAIRPERSON MILLER: So --

22 MR. BAUMANN: Yeah.

1 CHAIRPERSON MILLER: Okay.

2 MR. BAUMANN: Then there is
3 nothing really.

4 CHAIRPERSON MILLER: Okay. Yes,
5 that's fine. So you all can be excused. You
6 stay. Okay. Great. And we will recall you.

7 MR. ISASI: I just have never been
8 to one of these before.

9 CHAIRPERSON MILLER: Okay.

10 MR. ISASI: And I need to let my
11 office know when I'm going to be there.
12 Roughly, what do you think in terms of how
13 late this goes? Past lunch or --

14 CHAIRPERSON MILLER: No, no, no,
15 no. I think that we're talking about maybe 20
16 minutes or something.

17 MR. ISASI: Oh, okay.

18 CHAIRPERSON MILLER: Great, yeah.

19 MEMBER ALBERTI: Well, Madam
20 Chair, should we just say that if the licensee
21 doesn't show up by 11:00, that we would
22 dismiss it and just set that?

1 CHAIRPERSON MILLER: By 11:00?

2 MEMBER ALBERTI: Yeah. I would
3 say I would give the licensee until 11:00,
4 that's --

5 CHAIRPERSON MILLER: Oh, okay. I
6 think, yeah, we will be there at 11:00.

7 MEMBER ALBERTI: Because if they
8 haven't called --

9 CHAIRPERSON MILLER: Right.

10 MEMBER ALBERTI: I mean, if they
11 had called, I might give them more time.

12 CHAIRPERSON MILLER: Right.

13 MEMBER ALBERTI: But they have
14 not.

15 CHAIRPERSON MILLER: That they
16 were coming.

17 MEMBER ALBERTI: We have not heard
18 from them.

19 CHAIRPERSON MILLER: Right. Okay.
20 So that's 25 minutes. Okay.

21 MR. ISASI: No problem.

22 CHAIRPERSON MILLER: We do have a

1 question for Mr. Baumann while you are here,
2 before you go actually.

3 MR. BAUMANN: Sure.

4 CHAIRPERSON MILLER: We have a
5 note in our file that there is an issue with
6 respect to whether you filed the petition on
7 time. Are you aware of any issue about that?

8 MR. BAUMANN: That was mentioned
9 at the last -- at the initial --

10 CHAIRPERSON MILLER: Roll Call?

11 MR. BAUMANN: -- at the Roll Call
12 Hearing, but we definitely did. I can provide
13 some written proof to that extent if that
14 helps.

15 MEMBER ALBERTI: May I ask a
16 question?

17 CHAIRPERSON MILLER: Yeah.

18 MEMBER ALBERTI: Mr. Baumann, from
19 what my notes are or reflect is that, and I
20 may have this wrong, but did you claim that
21 you sent it -- sent the letter in via email?

22 MR. BAUMANN: I --

1 MEMBER ALBERTI: How did you send
2 the letter in?

3 MR. BAUMANN: -- don't recall,
4 because -- so I'm a designated representative
5 of -- for the commissioners, but I'm not a
6 commissioner myself and so I didn't sign the
7 letter or send it in, but I wish I had the --
8 I could go to my phone and go through my email
9 and see.

10 MEMBER ALBERTI: Okay. What is
11 going to be important to us --

12 MR. BAUMANN: Sure.

13 MEMBER ALBERTI: -- and I don't --
14 and would be helpful to you is if you find out
15 how it was sent in. If it was sent in via
16 email, you need -- it would be very helpful to
17 you if you could produce that email.

18 MR. BAUMANN: Right.

19 MEMBER ALBERTI: Because it will
20 be date stamped.

21 MR. BAUMANN: Yeah.

22 MEMBER ALBERTI: We do not have a

1 record of an email. That's not to say we
2 didn't get it, things -- I mean --

3 MR. BAUMANN: Yeah, I understand.

4 MEMBER ALBERTI: -- our staff is
5 great at that, but I can't say that, you know,
6 something didn't happen.

7 MR. BAUMANN: I'm pretty confident
8 that we -- so I took over as Chair of the
9 Liquor License Committee in January and the
10 first few protests that we did, this one and
11 MOVA, were hand-delivered by our staff person.
12 And we definitely were granted standing in
13 MOVA and you guys received that protest
14 letter. So it would be very strange if this
15 was dropped off the same day and you did not
16 receive it.

17 Since then, we have been sending
18 in via email. I don't think we realized we
19 could do that until recently. But I can check
20 my email and see if -- I should have an email
21 from our staff person saying exactly when he
22 dropped it off and all that.

1 MEMBER ALBERTI: Okay.

2 CHAIRPERSON MILLER: Okay. Let me
3 just say this, and that might not even be
4 necessary if he doesn't show by 11:00. So you
5 will see, because then the case would be
6 dismissed.

7 MEMBER ALBERTI: Well, Madam
8 Chair, I just --

9 CHAIRPERSON MILLER: What is
10 interesting --

11 MEMBER ALBERTI: -- would like --

12 CHAIRPERSON MILLER: Yes?

13 MEMBER ALBERTI: -- to say that --
14 I mean, if we go forward with this case, my
15 expectation is that would be the first issue
16 that would be addressed at the protest. I
17 mean, that would be a procedural issue that we
18 would have to address at the protest.
19 Hopefully you could supply documents before
20 then, so it would be addressed very quickly.

21 MR. BAUMANN: Yeah.

22 CHAIRPERSON MILLER: Oh,

1 absolutely.

2 MEMBER ALBERTI: But it is still
3 an outstanding issue for us. So just be
4 mindful of that.

5 MR. BAUMANN: Okay. Well, we will
6 resolve it as soon as possible.

7 MEMBER ALBERTI: Okay. Great.

8 MR. ISASI: If I could follow-up
9 with a question on that? Just what's the
10 consequence to us if for any reason there is
11 an impropriety with ANC's filing? Does that
12 -- anything happen to our protest as a result
13 of that?

14 CHAIRPERSON MILLER: Well, there
15 is still a protest by the other parties, the
16 Shaw-Dupont is still a protestant and group of
17 six. The ANC wouldn't have standing as a
18 party. They could testify as a witness if
19 they wanted for one of those groups.

20 MR. ISASI: Well, I'm confident we
21 won't have to go there. I just wanted to
22 know.

1 CHAIRPERSON MILLER: Okay. Yes,
2 that's fine. All right. So why don't you
3 hang in just a little longer and we will see
4 if the owner shows.

5 MR. ISASI: Thank you.

6 CHAIRPERSON MILLER: Okay. Thank
7 you.

8 (Whereupon, at 10:37 a.m. a recess
9 until 11:11 a.m.)

10 CHAIRPERSON MILLER: Okay. So now
11 we are going to get back to, I believe it is,
12 New Town Kitchen and Lounge, Case No. 14-PRO-
13 00010. We are recalling that case.

14 MEMBER RODRIGUEZ: All right.

15 MEMBER ALBERTI: Pardon?

16 MEMBER RODRIGUEZ: The owner is
17 not here.

18 CHAIRPERSON MILLER: You don't
19 have to sign-in again, but I think you should
20 identify yourselves on the record again.

21 MR. ISASI: William Isasi
22 representing the group of six.

1 MR. BAUMANN: Nick Baumann
2 representing ANC-1B.

3 MR. FERRIS: Elwyn Ferris
4 representing the Shaw-Dupont Citizens
5 Alliance.

6 MS. JOHNSON: Aileen Johnson,
7 member of the group of six.

8 CHAIRPERSON MILLER: Okay. We
9 called this case earlier and all the
10 protestants were here, I think, at least by
11 10:30 and we gave the licensee until 11:00 to
12 show, as he had not indicated, he or she,
13 probably he, to either the Board or the
14 protestants that he was delayed or on his way
15 or anything.

16 So we have not heard from him. So
17 our procedures in that case provide for us to
18 dismiss the application for failure to appear
19 at a Status Hearing. And the regulation is
20 1603.3, "Failure to appear in person or
21 through a designated representative may result
22 in denial of the license application or

1 dismissal of a protest, unless in the
2 discretion of the Board good cause is shown
3 for the failure to appear."

4 So we don't have any good cause
5 shown, at this point. The rules also allow
6 for the -- either party who doesn't show to
7 file a request for reinstatement with the
8 Board within 10 days of the written order
9 dismissing the party.

10 So I would move that we dismiss
11 the applicant in this case for failure to
12 appear.

13 MEMBER ALBERTI: Second.

14 CHAIRPERSON MILLER: Mr. Alberti
15 seconded the motion.

16 All those in favor say aye.

17 ALL: Aye.

18 CHAIRPERSON MILLER: All those
19 opposed? All those abstaining? The motion
20 passes --

21 MEMBER ALBERTI: May I add one?

22 CHAIRPERSON MILLER: -- 3-0-0.

1 Yes. Do you want to make a comment?

2 MEMBER ALBERTI: Yes.

3 CHAIRPERSON MILLER: Okay.

4 MEMBER ALBERTI: Mr. Baumann, if
5 in the future the licensee reapplies, which he
6 can all right, and you want the protest, a
7 protest to go forward, I would suggest that
8 you not rely on that -- the existing ANC
9 letter, because there is a question about when
10 it was submitted. Okay?

11 So we sometimes will accept -- in
12 these cases, if the protest -- the licensee
13 reapplies, we will accept the earlier protest
14 letters from protestants. They can just write
15 us a letter saying you have on file. We want
16 to carry forward that letter of protest for
17 this new application.

18 I wouldn't do that in your case.
19 I would get a new vote from the ANC and a new
20 letter. It would just make it cleaner and
21 then there would be no question of timing.

22 MR. BAUMANN: Okay.

1 MEMBER ALBERTI: Okay. Hopefully
2 you understand what I'm saying.

3 MR. BAUMANN: Yeah, so --

4 MEMBER ALBERTI: Sort of start
5 fresh.

6 MR. BAUMANN: -- if the applicant
7 reapplies, you are saying if the applicant
8 reapplies as opposed to this reinstated?

9 MEMBER ALBERTI: Right. If he
10 reapplies.

11 MR. BAUMANN: Okay. Yeah, okay.

12 MEMBER ALBERTI: If he is not
13 reinstated and reapplies, then --

14 MR. BAUMANN: We will plan on
15 doing that. I have also -- I don't know if
16 this is in order, but I have also forwarded to
17 Ms. Anderson and Ms. Fashbaugh, I think that's
18 how you pronounce her name, an email chain
19 dating back to January 13th, which I believe
20 was before the date that we were required to
21 get our letter in.

22 The confusion seems to stem from

1 the fact that our staff assistant --

2 MEMBER ALBERTI: Okay.

3 MR. BAUMANN: -- mislabeled the
4 email itself, not the letter, but the email
5 itself as a support, but the letter itself is
6 clear that it is a protest letter.

7 MEMBER ALBERTI: Okay.

8 MR. BAUMANN: And the email I
9 think shows that we got it in on time.

10 MEMBER ALBERTI: Okay.

11 MR. BAUMANN: So hopefully that
12 will clear up this confusion.

13 MEMBER ALBERTI: Thank you.

14 CHAIRPERSON MILLER: Okay.

15 MEMBER ALBERTI: It's good to have
16 that in the record. Thank you.

17 CHAIRPERSON MILLER: It's a
18 possibility that his motion for reinstatement
19 could be granted, in which case we would be
20 looking at those documents.

21 MR. BAUMANN: Right, right.

22 CHAIRPERSON MILLER: And you will

1 be served a copy of the written Board Order
2 and then you will know when the clock is
3 ticking. And the applicant is required to
4 serve you, as well as the Board, any Motion
5 for Reinstatement, because you are a party.
6 You all are parties.

7 MR. BAUMANN: Okay.

8 MR. ISASI: If I could ask a
9 question of the Board?

10 CHAIRPERSON MILLER: Sure.

11 MR. ISASI: So as protestants that
12 are living very close to this establishment,
13 I have really significant concerns. What
14 happens now to our concerns and the protest
15 that we filed?

16 CHAIRPERSON MILLER: They are
17 going to have to start the process again.
18 That's how it works.

19 MR. FERRIS: Yes, I have a
20 question. As I understand it, where we are at
21 right now, the applicant is going to be given
22 an opportunity, 10 days, to be reinstated. Is

1 that correct?

2 CHAIRPERSON MILLER: Yes.

3 MR. FERRIS: Okay. I know that
4 the bar for reinstatement for citizens groups
5 and for ANCs is a very high bar. Is it
6 similarly high for an applicant? It's not
7 just a procedural matter, correct?

8 CHAIRPERSON MILLER: Same
9 standard.

10 MR. FERRIS: Okay. If the Board
11 finds that the applicant's reason for failing
12 to appear today is unacceptable, where does
13 that leave us?

14 CHAIRPERSON MILLER: As I said,
15 the way it works is the process starts again.
16 He has to file a new application.

17 MR. FERRIS: So there is like no
18 repercussions to the applicant? We have been
19 through this process once and we are asked to
20 go through it again? That doesn't seem --

21 CHAIRPERSON MILLER: Okay. You
22 know -- right, that is, but I would say, you

1 know, that's a concern. That's a concern the
2 Agency, you know, can consider, but that's the
3 procedure right now. And then there is always
4 enforcement.

5 MR. FERRIS: If he is forced to
6 reapply, his original renewal period will have
7 expired, as I understand it. So will his
8 license to sell alcohol be revoked or
9 suspended during that reapplication period?

10 MEMBER ALBERTI: No.

11 CHAIRPERSON MILLER: No.

12 MR. FERRIS: So there is no
13 repercussions. He just doesn't show up and he
14 reapplies and we have to go through this all
15 over again?

16 CHAIRPERSON MILLER: I would say
17 this. What we have done is not make you like
18 get standing all over again. That we will
19 grandfather that in, so you don't have to go
20 through those hoops, you know, the same way.
21 But all I can say is, you know, if you think
22 that's not such a great system, you know,

1 maybe that's something that can be looked at,
2 you know.

3 MR. FERRIS: Yeah.

4 CHAIRPERSON MILLER: But that's
5 the what it is right now.

6 MR. FERRIS: Yeah, I think it's
7 not such a great system. It's highly
8 unprejudicial to the licensee and very
9 detrimental to citizens and citizen
10 associations and the ANC alike. The standards
11 between those two seem to be very disconnected
12 and inequitably enforced.

13 CHAIRPERSON MILLER: Okay.

14 MR. ISASI: I would just add that
15 the group of neighbors haven't had a statement
16 since January.

17 CHAIRPERSON MILLER: Okay. That's
18 what I was just saying. And we have to move
19 on soon to our next case. But you know, there
20 is also enforcement. So if there are issues
21 where they are, you know, noisy, violating the
22 law, that's something that the Agency acts on

1 right away. It's not, you know, something you
2 wait for a protest.

3 Call them. Call the hotline, you
4 know. And we have a new Task Force that is
5 going out on the streets four nights a week.

6 MR. ISASI: Oh, yeah, we know them
7 all very well.

8 CHAIRPERSON MILLER: Okay.

9 MS. JOHNSON: Could I ask one
10 question? Madam Chair, did you -- did I
11 understand you to say that if he was
12 reinstated or if he -- if that reinstatement
13 request was granted and then if he applied
14 again, that there are -- there is a
15 circumstance under which we don't have to
16 refile again and we just notify you that we
17 want to carry forth the protest that we have
18 already filed?

19 CHAIRPERSON MILLER: Okay. Just
20 for clarification. If he is reinstated in 10
21 days, he files a motion and we reinstate him,
22 we just pick up in this case.

1 MS. JOHNSON: All right.

2 CHAIRPERSON MILLER: And you
3 already have standing. But I said if he is
4 not reinstated, he has to apply again and
5 start the process again, but we have been
6 grandfathering in protestants that already got
7 standing the first time. We are not making
8 you go through proving you have standing
9 again.

10 MS. JOHNSON: Okay. Thank you.

11 CHAIRPERSON MILLER: Okay.

12 MR. ISASI: I understand the
13 hearing in this case is scheduled for June
14 11th, so if the -- if he is reinstated, it
15 would be in 10 days, which would be sort of
16 mid-May. And when would we find out whether
17 he is being reinstated? I'm just trying to
18 figure out. We need to know whether the
19 hearing is going to happen.

20 CHAIRPERSON MILLER: Okay. This
21 is the way it happens. Okay. We are going to
22 get an order out very quickly. This is a

1 pretty short order. So once that order goes
2 out and you will get served with it, he will
3 have 10 days to file. If he doesn't file
4 within 10 days, you know, it's over.

5 MR. ISASI: Right. And if he
6 does?

7 CHAIRPERSON MILLER: If he does--

8 MR. ISASI: When does --

9 CHAIRPERSON MILLER: Okay. If he
10 does and you want the Board to consider
11 changing the date, you can always file a
12 motion for the hearing.

13 MR. ISASI: Oh, okay. All right.
14 Okay.

15 CHAIRPERSON MILLER: Okay.

16 MR. BAUMANN: Okay. Thank you
17 very much.

18 CHAIRPERSON MILLER: All right.

19 MR. ISASI: Thank you.

20 CHAIRPERSON MILLER: Thank you.

21 (Whereupon, the Protest (Status)
22 Hearing in the above-entitled matter was

1 concluded at 11:20 a.m.)

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